

## § 401.1

## 24 CFR Ch. IV (4–1–08 Edition)

401.650 When may the owner request an administrative appeal?

401.651 Appeal procedures.

401.652 No judicial review.

AUTHORITY: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

SOURCE: 65 FR 15485, Mar. 22, 2000, unless otherwise noted.

### Subpart A—General Provisions; Eligibility

#### § 401.1 What is the purpose of part 401?

This part contains the regulations implementing the authority in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for the Mark-to-Market Program. Section 511(b) of MAHRA details the purposes, and section 512(2) details the scope, of the Program.

#### § 401.2 What special definitions apply to this part?

(a) *MAHRA* means the Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105–65, 42 U.S.C. 1437f note.

(b) *Statutory terms*. Terms defined in section 512 of MAHRA are used in this part in accordance with their statutory meaning. These terms are: comparable properties, expiring contract, expiration date, fair market rent, mortgage restructuring and rental assistance sufficiency plan, nonprofit organization, qualified mortgagee, portfolio restructuring agreement, participating administrative entity, project-based assistance, renewal, State, tenant-based assistance, and unit of general local government.

(c) *Other terms*. As used in this part, the term—

*Affiliate* means an “affiliate of the owner” or an “affiliate of the purchaser”, as such terms are defined in section 516(a) of MAHRA.

*Applicable Federal rate* has the meaning given in section 1274(d) of the Internal Revenue Code of 1986, 26 U.S.C. 1274(d).

*Community-based nonprofit organization* means a nonprofit organization that maintains at least one-third of its governing board’s membership for low-income tenants from the local commu-

nity, or for elected representatives of community organizations that represent low-income tenants.

*Comparable market rents* has the meaning given in § 401.410(b).

*Disabled family* has the meaning given in § 5.403(b) of this title.

*Elderly family* has the meaning given in § 5.403(b) of this title.

*Eligible project* means a project that meets the requirements for eligibility for a Restructuring Plan in § 401.100.

*HUD* means a HUD official authorized to act under the provisions of MAHRA, and otherwise has the meaning given in § 5.100 of this title.

*NHA* means the National Housing Act, 12 U.S.C. 1702 *et seq.*

*OAHP* means the Office of Affordable Housing Preservation, and any successor office.

*Owner* means the owner of a project and any purchaser of the project.

*PAE* means a participating administrative entity as defined in section 512(10) of MAHRA, or HUD when appropriate in accordance with section 513(b)(4) of MAHRA.

*PCA* means a physical condition assessment of a project prepared by a PAE under § 401.451.

*PRA* means a portfolio restructuring agreement as defined in section 512(9) of MAHRA.

*Priority purchaser* means a purchaser of a project, meeting qualifications established by HUD, that is:

(1) A tenant organization;

(2) A tenant-endorsed community-based nonprofit organization or public agency; or

(3) A limited partnership with a sole general partner that itself is a priority purchaser under this definition.

*Rental Assistance Assessment Plan* means the plan described in section 515(c)(2) of MAHRA.

*Restructured rent* means the rent determined at the time of restructuring in accordance with section 514(g) of MAHRA.

*Restructuring Plan* or *Plan* means the Mortgage Restructuring and Rental Assistance Sufficiency Plan described in section 514 of MAHRA.

*Section 8* means section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

*Section 541(b) claim* means a claim paid by HUD under an insurance contract under authority of section 541(b) of the National Housing Act, 12 U.S.C. 1735f-19(b).

*Tenant organization* of a project means an organization that meets regularly, whose officers are elected by a majority of heads of households of occupied units in the project, and whose membership is open to all tenants of the project.

*Unit of local government* means the smallest unit of general local government in which the project is located.

*Voucher* means any tenant-based assistance.

(d) *Conflicts of interest.* Additional definitions applicable to §§ 401.310 through 401.313 appear in § 401.310.

[65 FR 15485, Mar. 22, 2000, as amended at 65 FR 53900, Sept. 6, 2000; 71 FR 2120, Jan. 12, 2006; 72 FR 66038, Nov. 26, 2007]

### § 401.3 Who may waive provisions in this part?

The Assistant Secretary for Housing-Federal Housing Commissioner may waive any provision of this part, subject to § 5.110 of this title.

[68 FR 3363, Jan. 23, 2003]

### § 401.99 How does an owner request a section 8 contract renewal?

(a) *Requesting Restructuring Plan.* An owner may request a section 8 contract renewal as part of a Restructuring Plan by, at least 3 months before the expiration date of any project-based assistance, certifying to HUD that to the best of the owner's knowledge:

(1) Project rents are above comparable market rents; and

(2) The owner is not suspended or debarred or has been notified by HUD of any pending suspension or debarment or other enforcement action, or, if so, a voluntary sale or transfer of the property is proposed in accordance with § 401.480.

(b) *Eligible but not requesting Restructuring Plan.* If an owner is eligible for a Restructuring Plan but requests a renewal of project-based assistance without a Plan, in accordance with the applicable requirements in § 402.6 of this chapter, HUD will consider the request in accordance with § 402.4(a)(2) of this chapter.

(c) *Not eligible for Restructuring Plan.* Section 402.5 of this chapter addresses renewal of project-based assistance for a Restructuring Plan. An owner of such a project may also request renewal under § 402.4 of this chapter.

[65 FR 15485, Mar. 22, 2000, as amended at 65 FR 53900, Sept. 6, 2000]

### § 401.100 Which projects are eligible for a Restructuring Plan under this part?

(a) *What are the requirements for eligibility?* To be eligible for a Restructuring Plan under this part, a project must:

(1) Have a mortgage insured or held by HUD;

(2) Be covered in whole or in part by a contract for project-based assistance under—

(i) The new construction or substantial rehabilitation program under section 8(b)(2) of the U.S. Housing Act of 1937 as in effect before October 1, 1983;

(ii) The property disposition program under section 8(b) of the U.S. Housing Act of 1937;

(iii) The moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) The loan management assistance program under section 8 of the United States Housing Act of 1937;

(v) Section 23 of the United States Housing Act of 1937 as in effect before January 1, 1975;

(vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965;

(vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under Section 101 of the Housing and Urban Development Act of 1965; or

(viii) Section 8 of the U.S. Housing Act of 1937 as renewed under section 524 of MAHRA;

(3) Have current gross potential rent for the project-based assisted units that exceeds the gross potential rent for the project-based assisted units using comparable market rents;

(4) Have a first mortgage that has not previously been restructured under this part or under HUD's Portfolio Re-engineering demonstration authority as defined in § 402.2(c) of this chapter;